



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/716,356

11/21/2000

Shimpei Ushio

USHIO-2

8174

1444

7590

06/13/2006

BROWDY AND NEIMARK, P.L.L.C.
624 NINTH STREET, NW
SUITE 300
WASHINGTON, DC 20001-5303

EXAMINER

LUCAS, ZACHARIAH

ART UNIT

PAPER NUMBER

1648

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/716,356	Applicant(s) USHIO ET AL.	
	Examiner Zachariah Lucas	Art Unit 1648	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6-9-06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 6-9 and 19 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-9 is/are allowed.
- 6) ☒ Claim(s) 19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Status of the Claims

1. Currently, claims 6-9, and 19 are pending and under consideration.
2. In the prior action, the action mailed on March 28, 2006, claims 1, 2, 4-9, and 19 were pending in the application, with claims 1, 2, and 4-9, and 19 rejected. In the Response of June 9, 2006, the Applicant cancelled claims 1, 2, 4, and 5; and amended claims 6 and 19.

Claim Objections

3. **(New Objection)** Claim 19 is objected to because of the following informalities:

in line 8 of the claim, the phrase "18,500 . 3,000 daltons" appears as though it should read - - 18,500 \pm 3,000 daltons- -.

in line 11, the phrase "4.9 . 1.0" appears as though it should read - - 4.9 \pm 1.0- -.

in line 19, the term "win" should read - - with- -.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Art Unit: 1648

5. **(Prior Rejection)** Claims 1 and 4-9 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement with respect to the genus of compositions comprising contiguous fragments of SEQ ID NO: 6 wherein said fragments induce interferon- γ production in immunocompetent cells. In view of the cancellation of claims 1, 4, and 5; and the amendment of claim 6-9, the rejection is withdrawn from the cancelled claims and claims 6-9. However, for the reasons below, the rejection is extended to claim 19 as amended.

Claim 19 has been amended to read on compositions comprising the polypeptide of SEQ ID NO: 6, or fragments thereof, wherein the polypeptide meets the indicated physiochemical properties. In the claim as amended, the indicated physiochemical properties are not specifically stated as referring to the fragments as well as to the polypeptide. The amendment therefore nullifies the statement on page 5 of the prior action as to why claim 19 was not previously included in the rejection. Because the claim has been amended such that it no longer requires that the fragments of the polypeptide meet the indicated properties, the rejection is extended to the amended claim for the reasons described in the prior action with respect to cancelled claim 1.

Double Patenting

6. **(Prior Rejection- Withdrawn)** Claim 1 was rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 29 of prior U.S. Patent No. 6,214,584. This is a double patenting rejection. In view of the cancellation of this claim, the rejection is withdrawn.

Conclusion

7. Claims 6-9 appear allowable over the prior art.

Art Unit: 1648

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

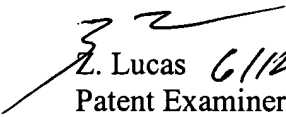
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

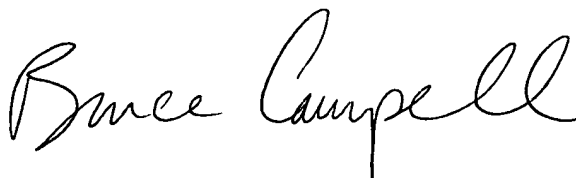
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 571-272-0905. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1648

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Z. Lucas 6/12/06
Patent Examiner



BRUCE R. CAMPBELL, PH.D.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600